

OGC Has Reviewed

OGC 73-0497
23 March 1973

MEMORANDUM FOR THE RECORD

SUBJECT: Election of Directors of GEHA

1. I recently spoke with the Superintendent of Corporations for the District of Columbia, Mr. Alfred Goldstein, concerning the District law under which the Government Employees Health Association (GEHA) is incorporated. GEHA is incorporated pursuant to the provisions of Title 29 of Chapter 6 of the District of Columbia Code (Charitable, Educational and Religious Associations). I neither identified myself as an Agency employee nor identified GEHA as the subject of my inquiry.

2. I explained to Mr. Goldstein that the association I was inquiring about had been incorporated around 1951. Its by-laws provided for the annual election of directors by members of the association. The by-laws gave the directors authority to amend the by-laws and omitted any reference to members' approval of these changes. I asked him for his interpretation of the language found at §29-603 of the Code that an "incorporated society may elect its . . . directors . . . in such manner as may be specified in its by-laws". I asked if an association incorporated under the authority of Chapter 6 was bound by the same concepts and rules of law as were ordinary business corporations.

3. Mr. Goldstein stated that the word "may" apparently was there because an association incorporated under Chapter 6 did not need to have members or shareholders. For example, three people who wish to associate themselves for the reasons

set forth at §29-601 may incorporate and in the certificate of incorporation name themselves directors. They may then draft by-laws and therein perpetuate themselves as directors. Only these three people are involved in this corporation. Mr. Goldstein went on to say that the by-laws are prevailing even in an incorporated association which has members or shareholders. He believes that where the by-laws of an association give the members certain substantive rights, such as the power to elect directors annually, this could not be taken away from them even where the directors have the authority to amend the by-laws without the approval of the members.

4. Mr. Goldstein believes that members should receive notice of an amendment to the by-laws which takes away their power to elect the directors and should have the right to vote on this amendment. Once the by-laws are amended, the directors could either perpetuate themselves in office or name their successors.

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Office of General Counsel

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